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OCT 27 1906
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No. 43.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

WARREN B. WILSON, APPELLANT,
v.
LESLIE M. SHAW, SECRETARY OF THE TREASURY,
APPELLEE.

APPEAL FROM THE COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

BRIEF FOR THE UNITED STATES.

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This bill was filed by the appellant to restrain the Secretary of the Treasury of the United States from paying out certain moneys to the Republic of Panama and the New Panama Canal Company, and also from issuing any bonds or borrowing any money or issuing any warrants for the payment of the expenses of the construction of the Panama Canal, the bill alleging that the act of June 23, 1902 (32 Stats., 481), to provide for the construction of a canal connecting the waters of the Atlantic and Pacific oceans has not been complied with, and is unconstitutional. The Republic of Panama and the New Panama Canal Company are also

named as defendants, but service was had only on the Secretary of the Treasury.

An order of the supreme court of the District of Columbia sustaining a demurrer filed by the Secretary was affirmed by the court of appeals, and this appeal was thereupon taken.

I.

Complainant is without right to sue.

The allegation of paragraph 1 of the bill is:

> That he is the owner of property of the United States of America, subject to taxation by the United States of America, and a taxable inhabitant of said United States of America.

There is no averment that he pays to the United States any taxes whatever. But if he is a taxpayer he is not entitled to bring such a suit unless he shows some direct and special injury to himself above that suffered by others.

> *Grant* v. *Cooke*, 7 D. C. Rep., 166;
> *State* v. *Thorson* (S. D.), 33 L. R. A., 584;
> *1 Beach, Mod. Eq. Juris.*, secs. 641–642;
> *1 High on Injunction*, sec. 9;
> *Georgetown* v. *Alex. Canal Co.*, 12 Pet., 91, 99.

Furthermore, we submit that there is a distinction between the interest of a taxpayer in money of a State or county raised by direct taxation and the interest of the complainant in the sums here appropriated by Congress.

In *Miles Planting Company* v. *Carlisle* (5 D. C., Apps., 147) the court said:

> The power of Congress to pay bounties to manufacturers or producers in order to encourage the manufacture or production of any article has never been passed upon by the courts. By the very nature of Federal taxation and appropriations of public money, questions respecting their validity are very difficult to be raised. There is no simple mode of challenge, as is the case in the States, where the taxpayer, having a direct interest, can invoke relief through injunction if need be.

II.

The payments sought to be enjoined having been made and thirty million dollars in bonds issued, of which the court will take judicial notice, this attempt to restrain payment is largely a moot question, which the court will not consider.

Mills v. *Green*, 159 U. S., 651.

American Book Company v. *Kansas*, 193 U. S., 49, 52.

Cheong Ah Moy v. *United States*, 113 U. S., 216.

III.

Title to the canal strip having been acquired, this suit in effect seeks to restrain the Government from improving its property. The United States is therefore a necessary party.

It has not consented to be sued and can not be sued without its consent.

Belknap v. *Schild*, 161 U. S., 10.
International Supply Company v. *Bruce*, 194 U. S., 601.
Oregon v. *Hitchcock*, 202 U. S., 60.

IV.

That this court will not attempt to enjoin the enforcement by the Executive of a statute simply because it is alleged to be unconstitutional is too well established to call for argument.

In *Mississippi* v. *Johnson* (4 Wall., 475), which was an attempt to restrain President Johnson from carrying out the provisions of the reconstruction acts, this court said (p. 498):

> The single point which requires consideration is this: Can the President be restrained by injunction from carrying into effect an act of Congress alleged to be unconstitutional? * * *
>
> Very different [from cases reviewed where mandamus issued against secretaries to compel them to do a merely ministerial act] is the duty of the President in the exercise of the power to see that the laws are faithfully executed, and among these laws the acts named in the bill. * * * The duty thus imposed on the President is in no just sense ministerial. It is purely executive and political.
>
> An attempt on the part of the judicial

> department of the Government to enforce the performance of such duties by the President might be justly characterized, in the language of Chief Justice Marshall, as "an absurd and excessive extravagance."
>
> It is true that in the instance before us the interposition of the court is not sought to enforce action by the Executive under constitutional legislation, but to restrain such action under legislation alleged to be unconstitutional. But we are unable to perceive that this circumstance takes the case out of the general principles which forbid judicial interference with the exercise of Executive discretion. .

And said Judge Cooley, delivering the opinion of the court in *Sutherland* v. *The Governor* (29 Mich., 320, 329):

> Were the courts to go so far, they would break away from those checks and balances of Government which were meant to be checks of cooperation, and not of antagonism or mastery, and would concentrate in their own hands something at least of the power which the people, either directly or by the action of their representatives, decided to entrust to the other Departments of the Government.

The questions presented are for political and not judicial determination.

In *Georgia* v. *Stanton* (6 Wall., 50) an injunction was sought to restrain the Secretary of War

and others from carrying out the provisions of the reconstruction acts, but this court said (p. 77):

> That these matters, both as stated in the body of the bill and in the prayers for relief, call for the judgment of the court upon political questions, and upon rights not of persons or property, but of a political character, will hardly be denied. For the rights for the protection of which our authority is invoked are the rights of sovereignty, of political jurisdiction, of government, of corporate existence as a State, with all its constitutional powers and privileges. No case of private rights or private property infringed, or in danger of actual or threatened infringement is presented by the bill, in a judicial form, for the judgment of the court.

And in *Mississippi* v. *Johnson* (*supra*) the court further said (p. 500):

> The Congress is the legislative department of the Government; the President is the executive department. Neither can be restrained in its action by the judicial department; though the acts of both, when performed, are, in proper cases, subject to its cognizance.
>
> The impropriety of such interference will be clearly seen upon consideration of its possible consequences.
>
> Suppose the bill filed and the injunction prayed for allowed. If the President refuse obedience, it is needless to observe that the court is without power to enforce its proc-

ess. If, on the other hand, the President complies with the order of the court and refuses to execute the acts of Congress, is it not clear that a collision may occur between the executive and the legislative departments of the Government? May not the House of Representatives impeach the President for such refusal? And in that case could the court interfere in behalf of the President, thus endangered by compliance with its mandate and restrain by injunction the Senate of the United States from sitting as a court of impeachment? Would the strange spectacle be offered to the public world of an attempt by this court to arrest proceedings in that court?

These questions answer themselves.

Obviously the present case is not one in which the performance of a purely ministerial act may be controlled by the court. In *Decatur* v. *Spaulding* (14 Pet., 497, 515), Chief Justice Taney said:

> The head of an executive department of the Government, in the administration of the various and important concerns of his office, is continually required to exercise judgment and discretion. He must exercise his judgment in expounding the laws and resolutions of Congress, under which he is, from time to time, required to act. If he doubts, he has a right to call on the Attorney-General to assist him with his counsel; and it would be difficult to imagine why a legal adviser was provided by law for the

heads of departments, as well as for the President, unless their duties were regarded as executive, in which judgment and discretion was to be exercised.

V.

The treaty with the Republic of Panama complies with the Spooner Act, if such compliance is necessary.

It is contended by appellant that the act of Congress of June 28, 1902 (32 Stat., 481), making an appropriation for the purchase of the canal strip "from the Republic of Colombia," did not authorize its acquisition from the Republic of Panama.

We submit that all Congress wanted was the control of a particular strip of ground and a satisfactory title to specified property. It was not of any importance to Congress from whom it obtained these, provided it got a good title to them, any more than such a thing would be of importance to any other purchaser.

What would a business man think of an agent sent to buy a farm from Smith for so much money who should let the chance go by and report to him that he did not buy the farm because he found that he would have to buy from Jones, to whom the title had been transferred, altho Jones was quite willing to sell at the price named? He would never again act as that business man's agent.

No one can read the treaty with the Republic of Panama without perceiving that the President and the Senate understood that it was a compliance with the Spooner Act concerning a treaty with Colombia.

Even the language of the treaty follows the language of the act. Thus section 2 of the act authorizes the President to acquire from the Republic of Colombia "perpetual control of a strip of land." Article II of the treaty grants to the United States "in perpetuity the use, occupation, and control of a zone of land."

Section 2 of the act provides for "the right to use and dispose of the waters thereon, and to excavate, construct, and to perpetually maintain, operate, and protect thereon a canal," etc. Article II of the treaty grants the right to the land for the "construction, maintenance, operation, sanitation, and protection of said canal."

Article VIII of the treaty grants to the United States the reversionary and other rights of Panama in the property of the New Panama Canal Company and Panama Railroad Company, which would not have been done except in contemplation of the proposed purchase of that property by the United States.

Article X exempts from taxes "the canal, the railways, and auxiliary works, tugs, and other vessels employed in the work of the canal, storehouses, workshops, offices," etc., which was a

promise to and for the United States evidently in contemplation that all these things were to belong to the United States after purchase from the company. Article XXII of the treaty expressly speaks of "the canal, works, property, and rights held by said companies under said concessions or otherwise, and acquired by the United States from or through the New Panama Canal Company," and the same article speaks further of the "consummation of the contemplated purchase by the United States from the New Panama Canal Company."

It can not be doubted that the property and rights acquired or to be acquired by the United States signified in the minds of the President and the Senate the property and rights already acquired or about to be acquired in pursuance of the Spooner Act.

The treaty and all of its provisions would be meaningless if it had not been understood that, notwithstanding the change of sovereignty from Colombia to Panama, the President remained authorized by the Spooner law to acquire perpetual control of that strip of land and the rights and property of the canal company, and to thereafter proceed to construct the canal.

We thus have the opinion of the President and Senate, engaged in the solemn business of making a public treaty, in confirmation of these views.

The President and the Attorney-General had it in their power to ask Congress, with every prospect

of a favorable reception of such request, to amend the Spooner law had they believed it necessary or even useful to do so. Congress itself was fully aware of the situation. Can it be that those who voted for the Spooner Act and for the treaty with Panama and for the act of April 28, 1904, were all indifferent to the successful execution of the project? An amendment of two lines would have sufficed, and yet no one deemed it necessary to alter the Spooner Act.

This court has frequently affirmed the principle that statutes should be given a reasonable construction and application. Thus, in *United States* v. *Kirby* (7 Wall., 482, 486–487), the court said:

> All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language, which would avoid results of this character. The reason of the law in such cases should prevail over its letter.

Again, in *Blake* v. *National Banks* (23 Wall., 307, 320):

> It is impossible to believe Congress intended to make this discrimination. It is entirely unreasonable, and is not in harmony with the well-known views of Congress on the subject.

Also, in *Law Ow Bow* v. *United States* (144 U. S., 47, 59):

> Statutes should receive a sensible construction, such as will effectuate the legislative intention, and, if possible, so as to avoid an unjust or an absurd conclusion.

See also *In re Chapman* (166 U. S., 661, 667).

So in *Bate Ref. Co.* v. *Sultsberger* (158 U. S., 1, 37):

> Undoubtedly the court, when endeavoring to ascertain the intention of the legislature, may be justified, in some circumstances, in giving weight to considerations of injustice or inconvenience that may arise from a particular construction of a statute.

In *Chesapeake and Potomac Tel. Co.* v. *Manning* (186 U. S., 245):

> But it is well settled that the courts always presume that the legislature acts advisedly and with full knowledge of the situation. Such knowledge can be acquired in other ways than by the formal investigation of a committee, and courts can not inquire how the legislature obtained its knowledge.

And again in *Collins* v. *New Hampshire* (171 U. S., 30, 34):

> In whatever language a statute may be framed, its purpose must be determined by its natural and reasonable effect.

And in *Knowlton* v. *Moore* (178 U. S., 41, 77):

> We are, therefore, bound to give heed to the rule that where a particular construction

of a statute will occasion great inconvenience or produce inequality and injustice, that view is to be avoided, if another and more reasonable interpretation is present in the statute.

And see *Interstate Commerce Commission* v. *Baird* (194 U. S., 38).

The spirit as well as the letter of a statute must be respected, and where the whole context of the law demonstrates a particular intent in the legislature to effect a certain object, some degree of implication may be called in to aid that intent. (*Durousseau* v. *United States*, 6 Cranch, 308, 314.)

Where the construction of the language of a statute is doubtful, courts will always prefer that which will confirm rather than destroy any bona fide transaction or title. The intention and policy of the enactment should be sought for and carried out. Courts should never indulge in nice grammatical criticism of prepositions or conjunctions in order to destroy rights honestly acquired. (*Griffith et al.* v. *Bogert et al.*, 18 How., 158, 163.)

And it is well settled that, in interpreting a statute, the court will not look merely to a particular clause in which general words may be used, but will take in connection with it the whole statute (or statutes on the same subject) and the objects and policy of the law, as indicated by its various provisions, and give to it such a construction as will carry into execution the will of the legislature as thus ascertained, according to its true intent and meaning.

> Neither will the court, in expounding a statute, give to it a construction which would in any degree disarm the Government of a power which has been confided to it, to be used for the general good—or which would enable individuals to embarrass it in the discharge of the high duties it owes to the community—unless plain and express words indicated that such was the intention of the legislature. (*Brown* v. *Dushesne*, 19 How., 183, 194–195.)
>
> The duty of the court, being satisfied of the intention of the legislature, clearly expressed in a constitutional enactment, is to give effect to that intention, and not defeat it by adhering too rigidly to the mere letter of the statute, or to technical rules of construction. * * * We ought, rather, adopting the language of Lord Hale, to be "curious and subtle to invent reasons and means" to carry out the clear intent of the law-making power when thus expressed. (*Oates* v. *National Bank*, 100 U. S., 239, 244.)

The prominent thought in these quotations is that when the lawmakers pass a law to accomplish a certain object the courts are to keep in mind the object to be accomplished, and so read the act as not to defeat but to further the accomplishment of the object in view.

If the controlling and important thing in the minds of Congress was to negotiate with Colombia, for the sake of deáling with Colombia, instead

of to acquire the canal strip for the purpose of building a canal on it, then it has had ample time to express its disapproval of the action of the Executive, of which it was well aware. It has done nothing of the kind. On the contrary, it past the act of April 28, 1904 (33 Stat., 429), authorizing the President, upon the acquisition of the property, to pay to the Panama Republic $10,000,000, as stipulated by article 14 of the treaty with that Republic, to take possession of the canal strip, provided that this payment should be made in lieu of the indefinite appropriation made in the third section of the Spooner Act, and also provided for the temporary government of the Canal Zone.

That act said that "upon the acquisition of the property of the New Panama Canal Company" certain things should be done. Upon what acquisition except that authorized by the Spooner law? The President is authorized to take possession of lands necessary or convenient for the construction, etc., of the canal. What construction except that authorized by the Spooner Act? And it speaks of the construction of the canal as already provided for.

In short, the act of 1904 fully confirmed the treaty with Panama and manifestly sanctioned the negotiations, known to all the world, which had just resulted, five days before the approval of the law, in the purchase of the company's property by the United States and payment therefor, and sanc-

tioned as well the payment of the specific amount of $10,000,000 in lieu of the indefinite appropriation made for the same purpose by the Spooner Act.

Further, it is a well settled principle that the interpretation of a statute by executive officials whose business it is to act under it will not be disturbed by the court except in cases in which the proper interpretation is free from doubt. It is needless to dwell upon the utility and wisdom of this principle. The obviously disastrous consequences of undoing the work of the executive branch of the Government are recognized by the court.

It is needless to say that it is but seldom that the executive officers act in one way when there is no doubt that the law intends a different course. Nor need it be added that the application of this useful principle is especially to be made when the executive officer who has acted is the Chief Magistrate and when his action has been deliberate and based upon the opinion of the chief law officer of the Government.

While theoretically possible it is hard to believe that such action upon such advice would be contrary to the law when the proper interpretation of the law was not a matter of any doubt.

> The construction given to a statute by those charged with the duty of executing it is always entitled to the most respectful consideration and ought not to be overruled without cogent reasons. The officers con-

cerned are usually able men and masters of the subject. Not unfrequently they are the draftsmen of the law they are afterwards called upon to interpret.

U. S. v. *Moore*, 95 U. S., 760, 763.
Heath v. *Wallace*, 138 U. S., 573, 582.

The principle that the contemporaneous construction of a statute by the executive officers of the Government, whose duty it is to execute it, is entitled to great respect, and should ordinarily control the construction of the statute by the courts, is so firmly embedded in our jurisprudence that no authorities need be cited to support it. On the faith of a construction thus adopted rights of property grow up which ought not to be ruthlessly swept aside unless some great public measure, benefit, or right is involved, or unless the construction itself is manifestly incorrect. (*Pennoyer* v. *McConnaughy*, 140 U. S., 1, 23.)

While, of course, no practice of a Department can nullify an act of Congress, yet such practice, if uniform and long continued, is a matter worthy of consideration in determining its construction. So many rights, it may be presumed, have been created in reliance upon it that the courts will hesitate to decide that the construction thus practically asserted is erroneous, and so overthrow all the titles depending thereon. (*Orchard* v. *Alexander*, 157 U. S., 372, 383.)

Counsel contends that nothing but an actual cession of the strip would comply with the Spooner

Act. But section 2, upon which he relies, obviously does not contemplate a complete cession. It says: "That the President is hereby authorized to acquire * * * *perpetual control*" of the strip, and the treaty, Article II, grants to the United States "in perpetuity the use, occupation, and control" of the Canal Zone. This amounts to a complete cession, and Article III grants all the rights, powers, and authority of complete sovereignty "to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power, or authority."

The contention that, as all other grants in the treaty are expressly made perpetual, the grant in Article III is temporary because not limited in time is at least singular. Obviously, all the grants were for the same purpose and were to have the same duration.

It is said we have not complied with the law because the cities of Panama and Colon are not included in the zone. The city of Colon is about one-fourth of a mile across—a very insignificant place in extent—and we get the zone, "extending from the Caribbean Sea to the Pacific Ocean," with this little city omitted, and, on the other end, Panama, which has a larger population, but is very compact and occupies a very small space. The zone is much wider than the Spooner Act requires, so that there seems to be a substantial compliance with the law. Congress did not undertake to say that there should not be a little indentation at

either end for the cities of Panama and Colon. Panama is the capital of the Republic and was the capital of the province, and was not intended by Congress to be included within the zone.

It is said the grant in the treaty is void because the zone is not defined; that it might be at various places, and we could not arrest and try a man for crime there, because we would not know whether he was in or out of the zone.

This is a hypercritical objection. The treaty contains numerous indications that the zone was to be along the canal that the French company had been building, and at or near the cities of Panama and Colon, because the treaty speaks of them—excepts them—authorizes us to buy from the company—every indication that it was to be along or near the old French company's canal, which is perhaps one-third finished. But that is not all. The President executes the laws. This treaty is the law, and he is bound to execute it. Panama being interested, even if he could not execute it altogether without consulting Panama, yet with the consent of that Republic he could proceed to delimit and mark off the zone. He is the one authorized to locate the canal, and the zone extends so many miles on either side of it. The locating of the canal would fix the zone. He has authorized the governor of Panama to locate the boundaries of the zone, and the governor has delimited the zone, with the cooperation of the Executive of Panama. They do know where it is, and they do

know where to arrest criminals, and they do arrest, try, and punish them. So, undoubtedly, the treaty intended the zone to be delimited in some way. There is a way under the treaty to render the zone certain, and it can yet be rendered certain, if it has not been. The grant is therefore not void.

Grants of land to be thereafter identified and made certain have frequently been upheld. (*Rutherford* v. *Greene*, 2 Wheat., 196; *Lessieur* v. *Price*, 12 How., 59.)

We submit, moreover, that the treaty does not stand or fall upon a determination of the question whether by it there was such an acquisition of territory as the Spooner Act contemplated. It is still a treaty and the law of the land as much as is the Spooner Act. It is as familiar a principle that treaties may make changes in statutory laws as that statutes may abrogate treaties. (*The Cherokee Tobacco*, 11 Wall., 616, 621.) With the treaty so clearly sanctioned by Congress in the act of 1904, the whole transaction from beginning to end seems to us so preeminently proper in every respect that the contentions of appellant appear at least astonishing.

As we have already seen, every act of Congress should receive a reasonable interpretation and should be interpreted to further instead of defeat its purpose, but this particular act especially should receive a very broad interpretation, for the reason that it dealt with a very broad, complicated, and

delicate subject. It concerned a great interoceanic highway which had been dreamed of for centuries. It concerned a highway on a foreign isthmus. It concerned a treaty with a foreign sovereignty over the Isthmus. It concerned an appropriation requiring the consent of both Houses of Congress and a treaty requiring the concurrence of our Senate and a foreign congress. It concerned a purchase from a company whose title was supposed to be very complicated and to involve a long series of bond issues, bankruptcy proceedings, and other like matters. Could it be supposed that Congress, in dealing with such a delicate subject, or such numerous delicate subjects, expected to have some little complication that might arise defeat such a scheme for the benefit of the country and the world at large? May it not be supposed, on the contrary, that Congress, in passing the law, rose to the height from which difficulties and uncertainties and complications might in a general way be anticipated as natural to occur? And is it not reasonable to ask the court to rise to a similar height and ignore the absolutely unessential fact that the sovereignty from which we obtained the strip changed, so that it became necessary to purchase from a new sovereignty over the same strip of territory instead of the original or former one?

VI.

The Spooner Act, the treaty with Panama, and the construction of the canal are not unconstitutional.

The contentions of counsel on this point seem to require but a few words in refutation.

The Constitution provides for the making of treaties. The power to acquire territory is no longer questioned.

Within the Territories of the United States Congress exercises the combined powers of the General and State governments. That the people of a State might construct a highway or canal will not be denied. (*Monongahela Navigation Company* v. *United States*, 148 U. S., 312, 334.) The Canal Zone is not in a State, and, Panama having consented, Congress can do as much there as in a Territory.

The Court of Appeals well said (Rec., p. 22):

> The construction of highways is the special function and even the duty of the State, and that function can not reasonably be denied to the United States in places in which it is sovereign and has exclusive jurisdiction.

If Congress, as an incident to its power to make war, may purchase places for public use, erect forts, arsenals, and navy-yards, and build military roads (*2 Story on Constitution*, 5th ed., secs. 1274, 1275), why may it not also construct a canal for

the more convenient passage of its naval vessels between Atlantic and Pacific coasts, and consequently for the better protection of itself from invasion?

Congress may, in exercising its power to regulate interstate commerce, construct, or authorize individuals or corporations to construct, railroads across the States and Territories of the United States (*California* v. *Central Pacific Railroad Company*, 127 U. S., 1), and may, directly or thru a corporation created for that purpose, construct bridges for the accommodation of interstate commerce by land. (*Luxton* v. *North River Bridge Company*, 153 U. S., 525, 530.) The canal when constructed will be an important roadway for both interstate and foreign commerce.

Under the commerce clause Congress has power over navigation (*2 Story on the Constitution*, secs. 1061, 1063) and removes obstructions to navigation. (*Gilman* v. *Philadelphia*, 3 Wall., 713.) The construction of this canal will be a very effective and important removal of such an obstruction.

The canal will also be a post-road.

It is not necessary that the construction of the canal should be authorized by the Constitution in express language. The scope and extent of the implied powers of Congress were discust by Chief Justice Marshall in the great judgment in *McCulloch* v. *Maryland* (4 Wheat, 316), by which the power to incorporate a bank was demonstrated

and affirmed, notwithstanding the Constitution does not enumerate among the powers granted that of establishing a bank or creating a corporation.

Said Chief Justice Marshall:

> "The Government of the Union, though limited in its powers, is supreme within its sphere of action," "and its laws, when made in pursuance of the Constitution, form the supreme law of the land." "Among the enumerated powers of Government we find the great powers to lay and collect taxes, to borrow money, to regulate commerce, to declare and conduct a war, and to raise and support armies and navies. The sword and the purse, all the external relations, and no inconsiderable portion of the industry of the nation are entrusted to its Government." "Where the law is not prohibited, and is really calculated to effect any of the objects entrusted to the Government, to undertake here to inquire into the degree of its necessity would be to pass the line which circumscribes the judicial department and to tread on legislative ground." (4 Wheat., 423.)

Mr. Justice Gray, in the Legal Tender Case (110 U. S., 421, 439), fittingly remarked that—

> A constitution, establishing a frame of government, declaring fundamental principles, and creating a national sovereignty, and intended to endure for ages and to be adapted to the various crises of human affairs, is not to be interpreted with the strict-

> ness of a private contract. The Constitution of the United States, by apt words of designation or general description, marks the outlines of the powers granted to the national legislature; but it does not undertake, with the precision and detail of a code of laws, to enumerate the subdivisions of those powers, or to specify all the means by which they may be carried into execution.

It clearly follows that there has been no departure by Congress from its constitutional authority and that the Court of Appeals rightly so held. Its decision should be affirmed.

CHARLES W. RUSSELL,
Assistant Attorney-General.
GLENN E. HUSTED,
Assistant Attorney.

HENRY M. HOYT,
Solicitor-General.

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